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EXAMINER

DINH, KHANH Q

ART UNIT	PAPER NUMBER
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2151

DATE MAILED: 03/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/581,632

Applicant(s)

CHIKADA ET AL.

Examiner

Khanh Dinh

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

## A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 1/2/2004.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1,5,6,10-13 and 17-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,5,6,10-13 and 17-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

DETAILED ACTION

1. This is in response to the Amendment filed on 1/2/2004 (paper # 7). Claims 2-4, 7-9 and 14-16 are canceled. Claims 1, 5, 6, 10-13 and 17 and new claims 18-25 are presented for examination.

*Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

3. Claims 1, 5, 6, 12, 13 and 17, 18-22 and 25 are rejected under 35 U.S.C. 102(e) as being anticipated by Wallach et al., US pat. No.6,292,905.

As to claims 1 and 6, Wallach discloses a communication control method for a data terminal which includes a data communication module (56 fig.5A) for transmitting data to or receiving data from another data terminal (54 fig.5A) connected with the data terminal, the method comprising the steps of

detecting an interruption of the communication (using the process 152B of fig.5A to detect the failure of server 56) and judging whether to reestablish the interrupted communication

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(determine that the server 54 can provide backup capacity, see figs. 5A-E, abstract, col.7 lines 25-67).

reestablishing the communication (resuming normal communication using server 56) without informing the data communication module of the interruption in communication, when it is detected that the communication is interrupted and it is judged, based on a cause for the interruption in communication, that the communication should be reestablished (see col.8 lines 1-49 and col.9 line 36 to col.10 line 29).

As to claims 5 and 10, Wallach discloses diagnosing the condition of a network, wherein it is judged, based on the cause for the interruption of a communication and the diagnosed condition of the network, whether to reestablish interrupted the communication (managing failure detection and providing the recovering data, see figs.6A-E, col.8 line 50 co col.9 line 35 and col.10 lines 4-53).

As to claim 12, Wallach discloses an inquiring module for sending an inquiry as to the condition of the network to an external diagnosing module for diagnosing the condition of a network, wherein the judging module judges, based on the cause for the interruption in communication and of condition of a network diagnosed by the external diagnosing module, whether to reestablish the interrupted communication (managing failure detection and providing the recovering data, see figs.6A-E, col.8 line 50 co col.9 line 35 and col.10 lines 4-53).

Claims 13 and 17 are rejected for the same reasons set forth in claims 1 and 5 respectively.

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As to claim 18, Wallach disclose in a communication device comprising a data communication module, a communication control method comprising of:

Detecting a disruption of communication while the communication is in progress by the data communication module (using the process 152B of fig.5A to detect the failure of server 56) and determining whether the disrupted communication is restorable (determining that the server 54 can provide backup capacity, see figs. 5A-E, abstract, col.7 lines 25-67).

When the disrupted communication is determined not restorable, reporting the disruption to the communication module and when the disrupted communication is determined restorable (based on the communications reestablished between servers), disguising the disruption from the data communication module while attempting to restore the communication and reporting the disruption to the data communication module when the attempt to restore the communication fails (see col.8 lines 1-49 and col.9 lines 2-35).

As to claim 19, Wallach discloses the data communication device is selected from a group of consisting of a portable computer, a server and a facsimile (see server 54 of fig.5A).

As to claim 20, Wallach discloses monitoring whether the disrupted communication has become restorable and reestablishing the communication after the disrupted communication has become restorable (see fig.8B, col.12 line 11 to col.13 line 46).

As to claims 21 and 22, Wallach discloses that the attempt to restore the communication is determined to fail when the disrupted communication does not become restorable within a period

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of time and caused by congestion in a network (see col.3 lines 38-63 and col.7 line 25 to col.8 line 33)

As to claim 25, Wallach discloses the disruption from the data communication from the data communication module comprising not reporting the disruption to the data communication module (see fig.4 and col.6 line 37 to col.7 line 24 and col.8 lines 1-35).

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 11, 23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wallach et al., US pat. No.6,292,905 in view of Ezaki, US pat. No.6,594,485.

Wallach's teachings still applied as in item 4 above. Wallach does not specifically disclose the data communication module performs data communication through a portable terminal which wirelessly communicates with a radio base station, the diagnosing module determines whether or not the portable terminal is within a wireless zone formed by the radio

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base station, and the judging module judges, based on whether or not the portable terminal is within the wireless zone, whether to reestablish the interrupted communication line. However, Ezaki discloses that wherein the data communication module performs data communication through a portable terminal (terminal 1 of fig.1) which wirelessly communicates with a radio base station (4 fig.1), the diagnosing module determines whether or not the portable terminal is within a wireless zone formed by the radio base station, and the judging module judges, based on whether or not the portable terminal is within the wireless zone, whether to reestablish the interrupted communication line (see figs.1, 2, abstract, col.7 line 4 to col.8 line 61 and col.10 line 5 to col.11 line 67). It would have been obvious to one of the ordinary skill in the art at the time the invention was made to implement Ezaki's teachings into the computer system of Wallach to reconnect communication between network devices in various network environments because it would have ensured stable communication between terminal users in radio signal communication system without increasing the number of radio base stations and without a burden on a system operator (see Ezaki's col.6 lines 11053 and col.10 lines 13-58).

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*Conclusion*

6. Claims 1, 5, 6, 10-13 and 17-25 are *rejected*.

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khanh Dinh whose telephone number is (703) 308-8528. The examiner can normally be reached on Monday through Friday from 8:00 A.m. to 5:00 P.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenton Burgess, can be reached on (703) 305-4792. The fax phone number for this group is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-9600.

Khanh Dinh  
Patent Examiner  
Art Unit 2151

3/11/04

  
FRANTZ B. JEAN  
PRIMARY EXAMINER